IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

Jannette Taylor,
on behalf of herself and all others similarly situated,

Plaintiff,

vs.

Merchants Credit Adjustors, Inc.
And
PANSING, HOGAN, ERNST & BACHMAN, L.L.P.,

Defendants.

Case No. :

COMPLAINT
and
JURY DEMAND

(Class Action)

I. **INTRODUCTION**

This is a consumer credit class action brought pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq*. (hereinafter "FDCPA" or "Act") and the Nebraska Consumer Protection Act ("NCPA") Neb. Rev. Stat. § 59-1601 *et seq*. Plaintiff Jannette Taylor, on behalf of herself and all persons similarly situated, seeks a declaratory judgment, injunctive relief, actual and statutory damages against the Defendant debt collectors Merchants Credit Adjustors, Inc., and PANSING, HOGAN, ERNST & BACHMAN, L.L.P. This matter arises from Defendants' routine practices of: (1) filing county court collection complaints against Nebraska Consumers, which represent that Defendants sent demand more than 90 days prior to filing of the suit for the purpose of availing themselves of statutory attorney fees and/or interest when in fact Defendants do not send such notice and (2) of sending certain standard discovery requests in county court collection cases, such as the Requests for Admissions to Nebraska consumers including the Plaintiff and the proposed class, which misrepresent the consumers' rights in responding to the Requests for Admissions. The challenged discovery questions also mislead and deceive the unsophisticated consumer into believing that Requests for Admissions must be signed under oath and filed with the court in order to defend the collection lawsuit. Finally, Plaintiff challenges Defendants' routine practices of attempting to collect any amounts for attorney fees or interest on their standard lawsuits stating a claim for "goods or services" without meeting the statutory requirements of Neb. Rev. Stat. § 25-1801. Defendants actions violate 15 U.S.C. § 1692e, § 1692e(2)(A), § 1692e(2)(B), § 1692e(9), § 1692e(10), § 1692f and § 1692f(1). Plaintiff also alleges that each of the challenged practices set forth herein violates the NCPA.

II. JURISDICTION

1. Subject matter jurisdiction of this Court arises under 15 U.S.C. § 1692k(d), 28 U.S.C. §§ 1331 and 1337. Jurisdiction over the supplemental state law claim arises under 28 U.S.C. § 1367.

2. In personam jurisdiction exists and venue is proper as Defendants are Nebraska entities which regularly do business in this district and the challenged practices occurred in this jurisdiction. Plaintiff is also a resident of this district. See 28 U.S.C. § 1391.

III. PARTIES

3. Plaintiff Jannette Taylor ("Ms. Taylor") is an adult individual residing in Omaha, Douglas County, Nebraska. At all times material hereto, Ms. Taylor and each member of the class she seeks to represent are "consumers" as that term is contemplated in § 1692a of the Act.

4. Merchants Credit Adjustors, Inc. ("MCA"), is a Nebraska corporation engaged in the business of collecting debts due or alleged to be due to others across the state of Nebraska, with its principal place of business in Omaha, Nebraska. MCA is a "debt collector" as that term is contemplated in § 1692a(6) of the Act. MCA has direct involvement in the actions challenged in this lawsuit.

5. PANSING, HOGAN, ERNST & BACHMAN, L.L.P. is the law firm for Defendant MCA and is itself engaged in the business of collecting debts due or alleged to be due to others across the state of Nebraska and is a "debt collector" as that term is contemplated in § 1692a(6) of the Act. This Defendant also has direct involvement in the actions challenged in this lawsuit.

6. Defendants are all entities or individuals who contributed to or participated in, or authorized, and/or implemented the policies and procedures regarding the acts complained of or conspired with the named Defendants to commit the acts complained of which caused injuries to the Plaintiff and the class. Each Defendant acted as principal and agent, each of the other, and combined and concurred each with the others in committing the acts complained of herein.

7. At all times relevant hereto, each Defendant was, and is now, the agent, servant, employee and or/ other representative of the other Defendant and in doing the things herein alleged, were acting within the scope, purpose and authority of such agency, service, employment and/or other representative capacity with the permissions, knowledge, consent and ratification of the other Defendant.

IV. FACTUAL ALLEGATIONS

8. On or about October 22, 2015, Defendants filed their standard county court collection complaint against Plaintiff Jannette Taylor in an action entitled, "*Merchants Credit*

Adjustors, Inc., v. Jannette Taylor," in the County Court of Douglas County, Nebraska, at Case No. CI15-21723. The law firm Defendant appears of record in the county court case. A true and correct copy of said collection complaint is attached hereto as Exhibit A and incorporated herein by this reference.

9. In the Taylor collection lawsuit, Defendants sought to collect on "goods or services" in the amount of $961.91. Paragraph 3 of the collection complaint, (Exhibit A) reads:

> **The provider(s) set forth in Exhibit "A," who have assigned their claims against the Defendant to the Plaintiff, provided goods or services to the Defendant at the Defendant's request, and billed Defendant for those goods or services.**

Exhibit A to the collection complaint simply identifies several creditors and amounts and does not list dates of service nor identify the patient.

10. Paragraph 4 of the collection complaint, (Exhibit A) reads:

> **More than ninety (90) days prior to filing this Complaint, written presentment and demand for payment was made on defendant for the goods or services set forth in Exhibit "A"**

11. Paragraph 5 of the collection complaint, (Exhibit A) reads:

> **As of the date of this Complaint, after deducting all payments and credits, there remains an unpaid balance for goods or services provided by the provider(s) set forth in Exhibit "A" which sums are fair and reasonable amounts for the goods and services provided**.

12. The alleged disputed debt was incurred primarily for personal, family, or household purposes.

13. The Taylor lawsuit also sought attorney fees, prejudgment interest as provided by law. The collection complaint seeks: **"$961.91 plus court costs, attorney fees, and prejudgment interest, all as allowed by law."**

14. Furthermore, Defendants did not send Ms. Taylor a demand or presentation of this claim prior to the filing of their collection lawsuit.

15. Ms. Taylor filed a *pro se* Answer/General Denial in the County Court collection lawsuit on or about March 7, 2016, disputing the debt and indicating that the accounts were not hers. (Attached hereto as Exhibit B and incorporated herein by this reference is a true and correct copy of said *pro se* Answer/General Denial.

16. Defendants served their standard discovery upon Ms. Taylor in the County Court collection lawsuit. Attached hereto as Exhibit C and incorporated herein by this reference is a copy of said Requests for Admissions.

17. The separate introductory instructions on the Requests for Admissions demand that the Answers to Requests for Admissions be sworn to and filed with the court, neither of which is a requirement of Nebraska Discovery Rules. Defendants provide instructions at the beginning of each type of discovery that are incomplete, do not fully comply with the law and mislead an unsophisticated consumer.

18. Ms. Taylor was in fact actually confused and misled and she filed sworn Answers to Requests for Admissions with the Court. (See Exhibit C).

V. DEFENDANTS' ROUTINE PRACTICES

19. It is Defendants' routine practice to file county court collection complaints in the form of Exhibit A which violates 15 U.S.C. § 1692e, § 1692e(2)(A), § 1692e(2)(B), § 1692e(9), 1692e(10), § 1692f and § 1692f(1) the FDCPA and the NCPA.

20. Defendants' routine practice is to send, or cause to be sent, certain standard Requests for Admissions in the county court collection lawsuits in the form of Exhibit C which violate 15 U.S.C. § 1692e, § 1692e(2)(A), § 1692e(2)(B), § 1692e(9), § 1692e(10), § 1692f and

§ 1692f(1) of the FDCPA as well as the NCPA.

21. Defendants' standard collection complaint in the Taylor matter alleges that, "**The provider(s) set forth in Exhibit "A," who have assigned their claims against the Defendant to the Plaintiff, provided goods or services to the Defendant at the Defendant's request, and billed Defendant for those goods or services."**

22. It is Defendants' policy and practice to represent in the standard collection complaint (Exhibit A) that "more than 90 days have elapsed since the presentation of this claim" for the purpose of availing themselves of attorney's fees and interest pursuant Neb. Rev. Stat. § 25-1801, when in fact Defendants do not routinely send a "claim" to consumers prior to filing the county court collection lawsuits.

23. It is Defendants' routine practice to seek and collect sums in addition to principal, such attorney fees and/or interest, even though their standard collection complaints do not meet or comply with the mandatory language or meet the requirements for being awarded either attorney fees or interest.

24. Defendants' routine practices of collecting unauthorized charges violates the FDCPA by seeking and collecting amounts, including interest, fees and costs, which are not permitted by law in violation of 15 U.S.C. §1692f and 1692f(1).

25. Defendants routinely file and prosecute said collection lawsuits against consumers in Nebraska.

26. Defendants systematically characterize the consumer debts in their standard collection complaints as being for "goods or services" in order to avail themselves of the benefits of Neb. Rev. Stat. §25-1801 and § 45-104, which include the collection of attorney fees interest and costs.

27. It is the routine policy and practice of Defendants to send *pro se* consumers Requests for Admissions (Exhibit C) requiring that the consumer's Answers to Requests for Admissions be sworn and filed with the court, which instructions confuse and mislead the unsophisticated consumer as to his or her rights in answering said discovery.

VI. CLASS ALLEGATIONS

FDCPA CLASS NO. 1

28. This action is brought as a class action on behalf of a class defined as: (i) all persons with addresses in Nebraska (ii) against whom Defendants filed a county court collection complaint in the form of Exhibit A or such a MCA collection lawsuit was pending or proceeding (iii) in an attempt to collect an alleged debt (iv) which, as shown by the nature of the alleged debt, Defendants' records, or the records of the original creditors, was primarily for personal, family, or household purposes (v) during the period one year prior to the date of filing this action.

FDCPA CLASS NO. 2

29. This action is brought as a class action on behalf of a class defined as: (i) all persons with addresses in Nebraska (ii) to whom Defendants sent, or caused to be sent Requests for Admissions in the form of Exhibit C (iii) in an attempt to collect an alleged debt (iv) which, as shown by the nature of the alleged debt, Defendants' records, or the records of the original creditors, was primarily for personal, family, or household purposes (v) during the period one year prior to the date of filing this action.

NCPA CLASS NO. 1

30. This action is brought as a class action on behalf of a class defined as: (i) all

persons with addresses in Nebraska (ii) against whom Defendants filed a county court collection complaint in the form of Exhibit A or such a MCA collection lawsuit was pending or proceeding (iii) in an attempt to collect an alleged debt (iv) which, as shown by the nature of the alleged debt, Defendants' records, or the records of the original creditors, was primarily for personal, family, or household purposes (v) during the period four years prior to the date of filing this action.

NCPA CLASS NO. 2

31. This action is brought as a class action on behalf of a class defined as: (i) all persons with addresses in Nebraska (ii) to whom Defendants sent, or caused to be sent Requests for Admissions in the form of Exhibit C (iii) in an attempt to collect an alleged debt (iv) which, as shown by the nature of the alleged debt, Defendants' records, or the records of the original creditors, was primarily for personal, family, or household purposes (v) during the period four years prior to the date of filing this action.

32. On information and belief based on Defendants' use of form Complaints and Requests for Admissions, the class is so numerous that joinder of all members is impractical.

33. There are questions of law and fact common to the class, which common questions predominate over any issues involving only individual class members. The principal questions are whether Defendants' county court collection complaint in the form of Exhibit A and Defendants' standard Request for Admissions in the form of Exhibit C violate 15 U.S.C. § 1692e, § 1692e(2)(A), § 1692e(2)(B), § 1692e(5),§ 1692e(9), § 1692e(10), § 1692f and § 1692f(1).

34. Plaintiff's claims are typical of the class members. All are based on the same facts and legal theories.

35. Plaintiff will fairly and adequately represent the interests of the class members. Plaintiff retained counsel experienced in class actions and debt collection abuse cases.

36. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. Individual cases are not economically feasible.

37. Certification of the Class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is appropriate in that:

> (a) The questions of law or fact common to the members of the Class predominate over any questions affecting only individual members; and
>
> (b) A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

38. Certification of a class pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure is also appropriate. Defendants have acted in a uniform manner toward the class thereby making injunctive and declaratory relief appropriate.

39. Plaintiff requests the Court certify a hybrid class combining the elements of Rule 23(b)(3) for monetary damages and Rule 23(b)(2) for equitable relief.

VII. COUNT I -- FAIR DEBT COLLECTION PRACTICES ACT

40. Plaintiff repeats, re-alleges, and incorporates by reference the foregoing paragraphs.

41. Defendants' county court collection complaint in the form of Exhibit A and Defendants' standard Requests for Admissions in the form of Exhibit B violate 15 U.S.C. § 1692e, § 1692e(2)(A), § 1692e(2)(B), § 1692e(5), 1692e(9), § 1692e(10), § 1692f and § 1692f (1).

WHEREFORE, Plaintiff prays that this Court certify the class and enter judgment for Plaintiff and the class members against the Defendants:

(a) Awarding actual damages, including disgorgement and refund of any amounts collected as a result of collecting attorney fees and/or interest without following the statutory requirements, with interest;

(b) Awarding statutory damages to the Plaintiff and also to the class as provided by 15 U.S.C. §1692k(a)(2);

(c) Awarding Plaintiff and the class their costs and reasonable attorney's fees;

(d) Declaring the challenged practices herein to be unlawful under the Act; and

(e) Granting such other and further relief as may be deemed just and proper.

VIII. COUNT II – CONSUMER PROTECTION ACT

42. Plaintiff incorporates by reference the allegations contained above as if the same were here set forth at length.

43. Each Defendant is a "person" engaged in "Trade or Commerce" as those terms are contemplated in the Consumer Protection Act, Neb. Rev. Stat. § 59-1601.

44. Defendants' routine acts of misrepresenting that it sent a demand more than 90 days prior to the filing of the lawsuit for the purpose of obtaining attorney fees and sending routine Requests for Admission to consumers, which mislead the unsophisticated consumer, constitute unfair or deceptive acts or practices, in violation of Neb. Rev. Stat. § 59-1602. The collection of any amounts as a result of said acts also constitute unfair or deceptive acts or practices, in violation of Neb. Rev. Stat. § 59-1602.

45. These violations cause financial injury to the Plaintiff and the Class and bringing this claim is in the public interest.

WHEREFORE, Plaintiff requests that judgment be entered for herself and the class against Defendants for:

A. Statutory damages, pursuant to Neb. Rev. Stat. §59-1609;

B. Injunctive relief pursuant to the NCPA;

C. Declaratory relief that Defendants' practices violate the NCPA;

D. Costs and reasonable attorneys' fees pursuant to Neb. Rev. Stat. §59-1609;

E. Actual damages for Plaintiff and the class; and

F. Such other and further relief as the court deems just and equitable.

IX. **JURY DEMAND**

Plaintiff demand a trial by jury of all claims so triable.

October 4, 2016

Jannette Taylor, on behalf of herself and all others similarly situated, Plaintiff,

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